



## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3030

[Docket No. RM2020-5; Order No. 6325]

RIN 3211-AA27

### Market Dominant Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes amendments to its regulations concerning rate incentives for Market Dominant products and republishes additional rules. The Commission invites public comment.

**DATES:** *Comments are due:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

### SUPPLEMENTARY INFORMATION:

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#### I. Background

In its general Market Dominant rate adjustment filings, the Postal Service routinely proposes to offer rate incentives in the form of promotions that reduce

rates by providing discounts, rebates, or credits to participating mailers of certain types of mailpieces. Typically, such promotions are offered for several months during a particular calendar year for certain mailpieces in the First-Class Mail and USPS Marketing Mail classes. If the Commission approves, then the promotion may be offered again, with or without modifications, in the next calendar year. Each rate incentive offered by the Postal Service is either a rate of general applicability or a rate not of general applicability. A rate incentive of general applicability may be eligible for inclusion in the percentage change in rates calculation (provided that it satisfies all the applicable criteria under the Commission rules), which will allow for the Postal Service to generate price cap authority for the applicable class of mail. By contrast, a rate incentive not of general applicability is ineligible for inclusion in the percentage change in rates calculation; it may not be used to generate price cap authority for the applicable class of mail.

The Commission previously adopted regulations concerning rate incentives for Market Dominant products.<sup>1</sup> However, in connection with an appeal, the Commission stated that it would reconsider Order No. 5510 and that it “does not intend to enforce Order No. 5510 during the reconsideration period.”<sup>2</sup> Having reconsidered, the Commission proposes modifying certain of those rules as well as republishing and enforcing certain other of those rules.

## **II. Basis for Proposed Rule Change**

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<sup>1</sup> Docket No. RM2020-5, Order Adopting Final Rules Regarding Rate Incentives for Market Dominant Products, May 15, 2022 (Order No. 5510).

<sup>2</sup> Docket No. RM2020-5, Notice of Intent to Reconsider, August 26, 2020, at 2 (Order No. 5655); see *U.S. Postal Serv. v. Postal Reg. Comm’n*, Joint Motion for Voluntary Dismissal and Vacatur, No. 20-1208 (D.C. Cir. Sept. 11, 2020).

The Commission proposes to clarify its rules by making one revision and by beginning to enforce two revisions that it made in Order No. 5510. First, the Commission proposes to amend § 3030.101(j) to clarify that to qualify as a rate of general applicability, a rate incentive cannot be based on historical mail volumes or prior participation in a rate incentive or promotion. Second, the Commission proposes to begin enforcing the changes that it made to § 3030.128(f)(2) in Order No. 5510 (including the additional criterion that a rate incentive must be made available to all mailers equally on the same terms and conditions to be eligible for inclusion in the percentage change in rates calculation). Third, the Commission proposes to begin enforcing the changes that it made to § 3030.123(j), including additional requirements intended to ensure that the Postal Service provides sufficient information at the outset of a Market Dominant rate adjustment proceeding.

The proposed revision of the definition of “rate of general applicability” in § 3030.101(j) is designed to clarify what rate incentives may qualify for inclusion in the percentage change in rates calculation as rates of general applicability. Under the Commission’s existing rules “[a] rate is not a rate of general applicability if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies[.]” 39 CFR 3030.101(j). A characteristic of the mail is a feature of the mail sent, not of the mailer sending the mail. Thus, the proposed rule adds an additional sentence to clarify that a rate incentive is not a rate of general applicability if eligibility for the rate is dependent in whole or in part on the volume of mail sent by a mailer in a past year or years or on the participation by a mailer in a rate incentive or promotion in a past year or years. Revising the Commission’s definition of “rate of general applicability” will provide other benefits. These other benefits include promoting

fairness, avoiding unharmonious situations in the application of the Commission's rules, limiting situations in which the Postal Service could obtain undue rate authority, and maintaining streamlined calculations.

The Commission also proposes republishing and beginning to enforce the requirement of § 3030.128(f)(2)(iv) that rate incentives included in the percentage change in rates calculation be "available to all mailers equally on the same terms and conditions." Enforcing this provision will enhance fairness. The Postal Service has the pricing flexibility generally to set individual Market Dominant rate cells as it chooses, subject to the class-level application of the price cap. When a rate incentive is not made available to all mailers equally on the same terms and conditions, the discounts received by eligible mailers could be offset in part by higher rates paid by non-eligible mailers. This situation could lead to the non-eligible mailers effectively paying higher rates as a result of the rate incentive without having an opportunity to receive its benefits. Enforcing the requirement of § 3030.128(f)(2)(iv) that rate incentives included in the percentage change in rates calculation be "available to all mailers equally on the same terms and conditions" will prevent such situations from arising.

To clarify the specific information necessary to determine whether rate incentives should be included in the percentage change in rates calculation, the Commission proposes republishing and beginning to enforce the requirements for the contents of the Postal Service's notice of rate adjustment related to Market Dominant rate incentives. These more detailed initial filing requirements will require the Postal Service to provide sufficient information at the outset of a Market Dominant rate adjustment proceeding to ensure that any rate incentive included in a percentage change in rates calculation meets the criteria of § 3030.128(f)(2).

### **III. Proposed Rule**

*Proposed § 3030.101(j).* Proposed § 3030.101(j) is revised to state clearly that the definition of “rate of general applicability” within the context of a Market Dominant rate adjustment proceeding does not include a rate incentive that is dependent on the volume of mail sent by a mailer in a past year or years or the participation by a mailer in a rate incentive or promotion in a past year or years.

*Current § 3030.123(j).* Current § 3030.123(j) is republished to identify clearly what information the Postal Service must file to support its claim that a rate incentive meets the necessary criteria to be included in a percentage change in rates calculation. Current § 3030.123(j) will be enforced in its entirety.

*Current § 3030.128(f)(2)(iv).* Current § 3010.128(f)(2)(iv) is republished to include a criterion for a Market Dominant rate incentive to be included in a percentage change in rates calculation that the incentive be available to all mailers equally on the same terms and conditions. Current § 3010.128(f)(2)(iv) will be enforced in its entirety.

### **List of Subjects in 39 CFR Part 3030**

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of the Federal Regulations as follows:

### **PART 3030—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS**

1. The authority citation for part 3030 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3622.

2. Amend § 3030.101 by revising paragraph (j) to read as follows:

**§ 3030.101 Definitions.**

\* \* \* \* \*

(j) ***Rate of general applicability*** means a rate applicable to all mail meeting standards established by the Mail Classification Schedule, the Domestic Mail Manual, and the International Mail Manual. A rate is not a rate of general applicability if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies. A rate incentive is not a rate of general applicability if eligibility for the rate is wholly or partially dependent on the volume of mail sent by a mailer in a past year or years or on the participation by a mailer in a rate incentive or promotion in a past year or years. A rate is not a rate of general applicability if it benefits a single mailer. A rate that is only available upon the written agreement of both the Postal Service and a mailer, a group of mailers, or a foreign postal operator is not a rate of general applicability.

\* \* \* \* \*

3. Republish § 3030.123 paragraph (j) to read as follows:

**§ 3030.123 Supporting technical documentation.**

\* \* \* \* \*

(j) Whenever the Postal Service includes a rate incentive with its planned rate adjustment, it must include with its filing:

(1) Whether the rate incentive is being treated under § 3030.128(f)(2) or under § 3030.128(f)(1) and (g);

(2) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in rates under § 3030.128(f)(2), whether the rate incentive is available to all mailers equally on the same terms and conditions; and

(3) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in rates under § 3030.128(f)(2), sufficient information to demonstrate that the rate incentive is a rate of general applicability, which at a minimum includes: The terms and conditions of the rate incentive; the factors that determine eligibility for the rate incentive; a statement that affirms that the rate incentive will not benefit a single mailer; and a statement that affirms that the rate incentive is not only available upon the written agreement of both the Postal Service and a mailer, or group of mailers, or a foreign postal operator.

\* \* \* \* \*

4. Republish § 3030.128 paragraph (f)(2) to read as follows:

**§ 3030.128. Calculation of percentage change in rates.**

\* \* \* \* \*

(f) \* \* \*

(2) A rate incentive may be included in a percentage change in rates calculation if it meets the following criteria:

(i) The rate incentive is in the form of a discount or can be easily translated into a discount;

(ii) Sufficient billing determinants are available for the rate incentive to be included in the percentage change in rate calculation for the class, which may be adjusted based on known mail characteristics or historical volume data (as opposed to forecasts of mailer behavior);

(iii) The rate incentive is a rate of general applicability; and

(iv) The rate incentive is made available to all mailers equally on the same terms and conditions.

By the Commission.

**Erica A. Barker,**

*Secretary.*

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